

THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MARK ANTHONY ROBINSON

:

Plaintiff

:

v.

3:11-CV-1724

(JUDGE MARIANI)

FRANKLIN J. TENNIS, et al.,

:

Defendants

:

ORDER

AND NOW, THIS 16<sup>43</sup> DAY OF AUGUST, 2013, upon de novo review of Magistrate Judge Carlson's Report & Recommendation (Doc. 65), Defendants' Objections thereto (Doc. 66), Plaintiff's Objections thereto (Doc. 72), and Plaintiff's Motion to Amend Complaint (Doc. 63), **IT IS HEREBY ORDERED THAT:**

1. Defendants' Objections (Doc. 66) are **OVERRULED**. Plaintiff has sufficiently pled a claim of First Amendment retaliation against Defendant Koltay.
2. Plaintiff's Objections (Doc. 72) are **OVERRULED IN PART AND SUSTAINED IN PART**.
3. The Report & Recommendation (Doc. 65) is **ADOPTED IN PART AND REJECTED IN PART**.
4. Plaintiff is **GRANTED LEAVE** to file an Amended Complaint (which he has filed on the docket at 63-1) subject to the following dismissals:

- a. Plaintiff's claims for Fourteenth Amendment denial of due process and Eighth Amendment cruel and unusual punishment against Defendant Kuhn are **DISMISSED WITH PREJUDICE**.
  - b. Plaintiff's claims for supervisory liability against Superintendent Tennis, Superintendent Lamas, Deputy Superintendent Horton, Inmate Program Manager Miller, Unit Manager Granlund, Lieutenant Grice, and Chief Hearing Examiner McIntyre are **DISMISSED WITH PREJUDICE**.
5. Accordingly, the claims remaining in the Amended Complaint (Doc. 63-1) are:
  - a. Plaintiff's claim for Eighth Amendment excessive force as to Defendants Sutton, Heverly, Best, and Davis.
  - b. Plaintiff's claim for First Amendment retaliation as to Defendants Koltay (refusal to provide medical treatment), Grice (refusal to return photographs of family members), Kuhn (repeatedly finding Plaintiff guilty of misconducts), and Sutton (paying an inmate to throw feces on Plaintiff).
  - c. Plaintiff's claim for First Amendment retaliation as to Defendant Marsh when Defendant Marsh allegedly instructed Nurse "Beth" to withhold Plaintiff's diabetes medicine from him in retaliation for petitioning the courts.
6. Plaintiff's claim for Eighth Amendment deliberate indifference against Defendant Koltay, having previously been dismissed with prejudice by this Court (Doc. 51), may not be re-asserted by Plaintiff.

7. The case is remanded to Magistrate Judge Carlson for further pre-trial proceedings.



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Robert D. Mariani  
United States District Judge